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EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/741,208

Applicant(s)

HENZERLING, DAVID P.

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it is too short and lacks detail.

Correction is required. See MPEP § 608.01(b).

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, in claim 1, the applicant provides a method claim with just one step. A method claim must have more than one step.

3. Claims 5-6 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, in claim 5, the meaning of the phrase 'requesting the requested music file from an automobile' is unclear. The phrase can be interpreted to mean either (a) request a

music file while in an automobile or (b) request that a file be sent from an automobile. For the sake of examination of claim 5 on its merits, the first definition is used.

4. Claims 18 and 19 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Specifically, in claim 18, on page 13, line 12 the phrase 'the music file' is vague because in line 9, two music files are named.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 11, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Drakoulis (US 6,256,303).

Drakoulis teaches a wireless broadcast system having all of the elements and means as recited in method claims 1-3 and apparatus claims 11, 13 and 14. For example, Drakoulis teaches the following:

There is a step of wirelessly receiving audio (column 1, lines 5-15); the file may be a music file in the MP3 format (column 4, lines 7-13) that is received into flash memory. Flash memory is a form of non-volatile memory. Re claim 14 specifically, Drakoulis has (column 1, line 15) an output device for playing music signals.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-5, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis in view of Razavi et al. (US 6,253,122). The teachings of Drakoulis have been discussed above.

Re claims 4-5: Drakoulis fails to show receiving the file from either an Internet Service Provider or to a car.

Razavi shows (column 11, lines 60-67) a set-up in which an internal car network (column 1, lines 5-10) is connected to an ISP. The user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

In view of Razavi's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known retrieving of music files into a car through an Internet service provider in the teachings of Razavi because this enables the driver and passengers to enjoy a wide variety of music not otherwise available, thereby enhancing the travel experience.

Re claim 8: The system of claim 4 incorporated claim 8. An Internet Service Provider amounts to a computer running certain software.

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9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis as modified by Razavi as applied to claim 5 above, in further view of Fanning et al. (US 6,366,907), hereinafter referred to as Napster.

Drakoulis as modified by Razavi shows music files being retrieved from a server into cars.

Drakoulis as modified by Razavi fails to show (re claim 6) receiving a requested music file from another automobile or (re claim 7) transmitting a music file from an automobile.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Drakoulis as modified by Razavi because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis in further view of Tosaya (US 6,323,893). The teachings of Drakoulis have been discussed above.

Drakoulis fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya in to the teachings of Drakoulis because Bluetooth is a

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standard with hardware and software support in industry and using it allows standard parts to be employed.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis as applied to claim 1 above, in further view of Segal et al. (US 6,167,251).

Drakoulis fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal in the teachings of Drakoulis because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis as applied to claim 11 above in further view of Tosaya (US 6,323,893).

Drakoulis fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya in to the teachings of Drakoulis because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis as applied 11 above, in further view of Napster.

Drakoulis shows music files being retrieved from a server wirelessly, but fails to show peer-to-peer action.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Drakoulis as modified by Razavi because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

14. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis in view of Britt, Jr. et al. (US 6,230,319).

Re claim 16: Drakoulis discloses wirelessly receiving audio (column 1, lines 5-15); the file may be a music file in the MP3 format (column 4, lines 7-13) that is received into flash memory. Flash memory is a form of non-volatile memory.

Drakoulis fails to show receiving a fail in two distinct communications.

Britt shows (column 3, lines 1-10) a system of resumable downloads whereby communication is broken during file download and then resumed.

In view of Britt's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known two-communication



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download as taught by Britt in the teachings of Drakoulis because a system of resuming broken downloads avoids user frustration and saves time and bandwidth.

Re claim 17: Drakoulis has (column 4, line 12) a replay device which plays the music file.

15. Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drakoulis as modified by Britt, Jr. as applied to claim 16 above, in further view of Fanning.

Drakoulis as modified by Britt fails to show peer-to-peer action.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Drakoulis as modified by Britt because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

#### *Additional Remarks*

16. The lack of an art rejection with respect to claims 18 and 19 of this Office action is not an indication of allowable subject matter (i.e. even if claims 18 and 19 were rewritten or amended to overcome the rejection under 35 U.S.C. 112 discussed above.) The disclosure/claimed language is such that it is impractical to conduct a reasonable search of prior art by the examiner.

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*Conclusion*

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DH  
April 24, 2002

Daniel A Hess  
Examiner  
Art Unit 2876



THIEN M. LE  
PRIMARY EXAMINER